

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Peter David McBean)	
)	CASE NO. 5:07CV1328
Petitioner,)	5:93CR0237
)	
v.)	
)	<u>MEMORANDUM OPINION</u>
Harley G. Lappin, Director)	(Resolving Doc. Nos. 1 & 5)
Bureau of Prisons, et al.,)	
)	
Respondents.)	

On May 8, 2007 Petitioner Peter McBean filed the above-captioned civil action pursuant to 28 U.S.C. Section 2241 challenging the terms of his incarceration as they relate to spending limits imposed on him at the prison commissary as a result of his failure to participate in the Inmate Financial Responsibility Program for payment of restitution previously ordered by the Court. See Petitioner's Memorandum of Law in Support of Petition, Docket No.1 at 5.

The Court has addressed the issue of restitution on two previous occasions and has denied Petitioner relief from the terms of the sentence imposed while he is incarcerated. See Case No. 05:93CR0237, December 27, 2004 Order (Docket No. 324) and January 16, 2007 Order (Docket No. 332).

On May 9, 2007, the Court granted the Government leave to file its response to the petition. The response in the form of a Memorandum of Law was timely filed on July 5, 2007. See Docket No. 4.

The Court has considered the matter based on the arguments advanced by the parties. For the reasons set forth in the Government's comprehensive Memorandum of Law, the petition (Docket No. 1) is denied.

(5:07CV1328)

(5:93CR0237)

Petitioner has also filed a document captioned “Notice to Court and Motion for Summary Judgment,” (Docket No. 5), challenging the timeliness of the Government’s response, but the docket reflects that the response was well within the time allotted by the Court. Accordingly, Petitioner’s Motion for Summary Judgment (Docket No. 5) is denied.

The Court also certifies, pursuant to 28 U.S.C. 1915(a)(3), that an appeal from this decision could not be taken in good faith.

The Court further finds no basis for a certificate of appealability and will not issue a certificate of appealability.

IT IS SO ORDERED.

August 13, 2007,
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge